

## § 124.512

## 42 CFR Ch. I (10–1–99 Edition)

with its assurance for the period covered by the certification. The procedures will include examination of individual account data to the extent deemed necessary by the Secretary.

(iii) A certification of substantial compliance will be made where the Secretary determines that, for the period covered by the certification, the facility provided uncompensated services to eligible persons who had equal opportunity to apply therefor. In making this determination, the Secretary will consider, in descending order of importance, whether—

(A) Corrective action prescribed pursuant to § 124.512(b) has been taken by the facility;

(B) Any noncompliance with the requirements of this subpart may be remedied by corrective action under § 124.512(b);

(C) The facility had procedures in place that complied with the requirements of §§ 124.504(c), 124.505, 124.507, 124.509, 124.510, 124.513(b)(2), 124.514(b)(2), 124.515, and 124.516 (b)(1) or (b)(2), as applicable, and systematically correctly followed such procedures.

(2) *Compliance prior to February 1, 1988.* The Secretary will determine the amount of creditable services provided prior to the effective date of these rules using the compliance standards applicable under the rules as promulgated on May 18, 1979, based on procedures determined by the Secretary to be sufficient to establish that the facility provided such amounts of uncompensated services in the period(s) being assessed.

(c) *Determinations of financial inability.* In determining whether a facility was or is financially able to meet its annual compliance level, the Secretary will consider any comments submitted by interested parties. In making this determination, the Secretary will consider factors such as:

- (1) The ratio of revenues to expenses;
- (2) The occupancy rate;
- (3) The ratio of current assets to current liabilities;
- (4) The average cost per patient day;
- (5) The number of days of operating expenses in accounts payable;
- (6) The number of days of revenues in accounts receivable;

(7) The sinking fund (or depreciation fund) balance;

(8) The debt coverage ratio; and

(9) The availability of restricted or unrestricted funds (such as an endowment) available for charitable use.

[52 FR 46031, Dec. 3, 1987; 52 FR 48362, Dec. 21, 1987; 53 FR 5576, Feb. 25, 1988; 59 FR 44639, Aug. 30, 1994]

### § 124.512 Enforcement.

(a) If the Secretary finds, based on his/her investigation under § 124.511, that a facility did not comply with the requirements of this subpart, the Secretary may take any action authorized by law to secure compliance, including but not limited to, voluntary agreement or a request to the Attorney General to bring an action against the facility for specific performance.

(b) A facility, including a facility certified under § 124.513, § 124.514, or § 124.516, that has denied uncompensated services to any person because it failed to comply with the requirements of this subpart will not be in compliance with its assurance until it takes whatever steps are necessary to remedy fully the noncompliance, including:

- (1) Provision of uncompensated services to applicants improperly denied;
- (2) Repayment of amounts improperly collected from persons eligible to receive uncompensated services; and
- (3) Other corrective actions prescribed by the Secretary.

(c) The Secretary may disallow all of the uncompensated services claimed in a fiscal year where the Secretary finds that the facility was in substantial noncompliance with its assurance because it failed to:

- (1) Have a system for providing notice to eligible persons as required by § 124.504(c), § 124.513(b)(2), § 124.514(b)(2), or § 124.516(b)(2)(ii)(A), as applicable;
- (2) Comply with the applicable reporting requirements of § 124.509;
- (3) Have a system for maintaining records of uncompensated services provided in accordance with § 124.510; or
- (4) Take corrective action prescribed pursuant to paragraph (b) of this section.

(d) In the absence of a finding of substantial compliance or substantial non-compliance in a fiscal year, the Secretary may disallow uncompensated services claimed by a facility in that fiscal year to the extent that the Secretary finds that such services are not documented as uncompensated services under § 124.510 or are subject to disallowance under § 124.513(d) or § 124.514(d), as applicable.

[52 FR 46031, Dec. 3, 1987, as amended at 59 FR 44639, Aug. 30, 1994]

**§ 124.513 Public facility compliance alternative.**

(a) *Effect of certification.* The Secretary may certify a facility which meets the requirements of paragraphs (b) and (c) of this section as a "public facility". A facility which is so certified is not required to comply with this subpart except as otherwise herein provided.

(b) *Criteria for qualification.* A public facility may qualify for certification under this section if all of the following criteria are met:

(1) It is a facility which is owned and operated by a unit of State or local government or a quasi-public corporation as defined at 42 CFR 124.2(m).

(2) It provides health services without charge or at a substantially reduced rate to persons who are determined by the facility to qualify therefor under a program of discounted health services. A "program of discounted health services" must provide for financial and other objective eligibility criteria and procedures, including notice prior to nonemergency service, that assure effective opportunity for all persons to apply for and obtain a determination of eligibility for such services, including a determination prior to service where requested; *provided that*, such criteria and procedures are not required where the facility makes all services available to all persons at no or nominal charge.

(3)(i) It received, for the three most recent fiscal years, at least 10 percent of its total operating revenue (net patient revenue plus other operating revenue, exclusive of any amounts received, or if not received, claimed, as reimbursement under titles XVIII and XIX of the Social Security Act) from

State and local tax appropriations or other State and local government revenues, or from a quasi-public corporation as defined at 42 CFR 124.2(m), to cover operating deficits attributable to the provision of discounted services; or

(ii) If provided, in each of the three most recent fiscal years, uncompensated services under this subpart or under programs described by the documentation provided under § 124.513(c)(2) in an amount not less than twice the annual compliance level computed under § 124.503(a).

(c) *Procedures for certification.* To be certified under this section, a facility must submit to the Secretary, in addition to other materials that the Secretary may from time to time require, copies of the following:

(1) Audited financial statements or official State or local government documents (such as annual reports or budget documents), for the three most recent fiscal years, sufficient to show that the facility meets the criteria in paragraph (b)(3)(i) or (ii) of this section.

(2) A complete description of its program(s) of discounted health services, including charging and collection policies of the facility, and eligibility criteria and notice and determination procedures used under its program(s) of discounted services.

(d) *Period of effectiveness.* (1) A certification by the Secretary under this section remains in effect until withdrawn. The Secretary may disallow credit under this subpart when the Secretary determines that there has been a material change in any factor upon which certification was based or substantial noncompliance with this subpart. The Secretary may withdraw certification where the change or noncompliance has not been adequately remedied or otherwise continues.

(2) *Deficits*—(i) *Title VI-assisted facilities with assessed deficits.* Where a facility assisted under title VI of the Act has been assessed as having a deficit under § 124.503(b) that has not been made up prior to certification under this section, the facility may make up that deficit by either—

(A) Demonstrating to the Secretary's satisfaction, that it met the requirements of paragraph (b) of this section